

**STATE OF MICHIGAN
BEFORE THE MICHIGAN SUPREME COURT**

COMPLAINT AGAINST:

Hon. Steven R. Servaas
63rd District Court
105 Maple Street
Rockford, MI 49341

Docket No.

PETITION FOR INTERIM SUSPENSION

The Examiner, Paul J. Fischer, brings this “Petition for Interim Suspension”
for the reasons that follow:

1. Respondent is a judge of the 63-1 district court, located in Rockford, Michigan.
2. Respondent maintains his domicile outside the territory of the 63-1 District Court, from which he was elected.
3. The Constitution provides that a judge who changes his domicile to a location outside the territory from which he was elected has vacated his judicial office. Const 1963, art. 6 §20.
4. For the reasons set forth more at length in the supporting brief, the Court should enter an order suspending Respondent from office pending final resolution of these proceedings.
5. Pursuant to MCR 9.219(A), Formal Complaint No. 84 is filed contemporaneously with this petition.

WHEREFORE, the Examiner respectfully requests that this Honorable Court enter an order suspending Respondent from office, pending final resolution of these proceedings.

Respectfully submitted,

By: _____/s/_____
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DATED: February 14, 2008

**STATE OF MICHIGAN
BEFORE THE MICHIGAN SUPREME COURT**

COMPLAINT AGAINST:

Hon. Steven R. Servaas
63rd District Court
105 Maple Street
Rockford, MI 49341

Docket No.

**BRIEF IN SUPPORT OF
PETITION FOR INTERIM SUSPENSION**

INTRODUCTION

Judge Steven Servaas (“Respondent”) has violated the Michigan Constitution and vacated his judicial office by removal of his domicile from the electoral district he is required to live in as a judge of the first division of the 63rd District Court. This Honorable Court should now suspend Respondent pending resolution of allegations set forth in Formal Complaint 84.

I. BY LAW, RESPONDENT MUST BE A “REGISTERED ELECTOR” WITHIN THE TERRITORIAL LIMITS OF THE 63RD DISTRICT COURT, FIRST DIVISION, IN ORDER TO BE A JUDGE OF THAT COURT AND DIVISION

District court judges are not only required by statute to be residents of the district from which they were elected and serve as judge, but also from any electoral *division* within that district. “[A] judge of the district court shall be a registered elector of the district *and election division* in which he . . . holds office.” MCL 600.8201 (emphasis supplied). A “registered elector” is a person who has actually registered to vote. MCL 168.495; MCL 168.499; MCL 168.500a.

The Michigan Constitution defines “elector” as

“[e]very citizen of the United States who has attained the age of 21 years^[1], who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. Const 1963, art. 2, §1

However, just being an “elector” does not make every such person “qualified” or “registered” to vote. A “*qualified* elector” is defined as “any person who possesses the qualifications of an elector as prescribed in section 1 of article 2 of the state constitution and who has resided in the city or township 30 days.” MCL 168.10.

The Michigan Constitution further provides for the legislature to define what constitutes “residence” for voting purposes. Const 1963, art. 2, §1. “Residence” is defined in the Michigan Election Law (MCL 168.1 *et seq*) as

“that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence. MCL 168.11(1)

A person can only have one residence or “domicile.”² The definitions of “home” and “residence” contain the notion of

“permanence, of a place to which one returns, a place where one intends to remain, a haven, a domicile. * * * One cannot be permanently located in more than 1 place; one cannot be domiciled in more than 1 place; one cannot intend to remain for an extended period of time in more than 1 place.” *In re Scheyer’s Estate*, 336 Mich 645, 651-652 (1953)

¹ U.S. Const., Amendment XXVI, § 1, provides: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” Accordingly, Michigan’s 21-year-old qualification must now be read to include 18-year-old electors.

² “Residence” and “domicile” are synonymous in Michigan. *Hartzler v Radeka*, 265 Mich 451, 452 (1933); *Leader v Leader*, 73 Mich App 276, 281 (1977).

Residence is determined by fact and intention. There must be the fact of abode and the intention of remaining. *Reaume & Silloway v Tetzlaff*, 315 Mich 95, 99 (1946). Presence, abode, property ownership and other acts are often considered, yet intent is the key factor. *Id.* However, where the underlying facts are not in dispute, domicile is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364 (2002). There can be no factual dispute regarding Respondent's establishment and maintenance of a domicile outside his elected judicial district, in violation of MCL 600.8201, based on his own admission through claiming of a homestead exemption for property located outside this district.

II. RESPONDENT PURPORTS TO BE A “REGISTERED ELECTOR” IN CANNON TOWNSHIP (WITHIN THE FIRST DIVISION OF THE 63RD DISTRICT COURT) WHEN, IN FACT, HE IS A *NON-REGISTERED* ELECTOR IN THE *SECOND* DIVISION OF THE COURT.

The 63rd district court consists of two divisions. MCL 600.8130(4). The first division (63-1) consists of the cities of Cedar Springs and Rockford and the townships of Tyrone, Solon, Nelson, Spencer, Sparta, Algoma, Courtland, Oakfield, Alpine, Plainfield, Cannon and Grattan and has one elected judge (Respondent, Judge Steven Servaas). MCL 600.8130(4)(a). The second division (63-2) consists of the cities of East Grand Rapids and Lowell and the townships of Grand Rapids, Ada, Vergennes, Cascade, Lowell, Byron, Gaines, Caledonia and Bowne and has one elected judge (Chief Judge Sara Smolenski). MCL 600.8130(4)(b).

On January 13, 2006, Respondent signed an affidavit asserting that his residence at 201 Honey Creek Ave NE, Ada Township, Kent County, 49301, became his “principal residence” on December 31, 2005, and that he rescinded the principal residence exemption for property he

previously claimed as his principal residence.³ The General Property Tax Act (MCL211.1a *et seq*) defines “principal residence” as: “[t]he 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.” MCL 211.7dd. The definition of “principal residence” under the affidavit Respondent executed to establish his Ada Township property as his principal residence nearly replicates the definition of “residence” under the Michigan Election Law, the place he habitually sleeps, keeps his personal effects and has a regular place of lodging, and if he has more than one residence the place he resides the greater part of the time. MCL 168.11(1).

Respondent’s domicile is at 201 Honey Creek Ave NE, Ada Township, Kent County, 49301. That is his primary residence or domicile. It is where he lists himself in the phone book.⁴ It is the address he holds out to the world as his residence. By his own admission, in his prior pleadings and in his affidavit he has indicated that he resides in Ada Township. Thus, he is a “qualified elector” in Ada Township, the locality where he resides. His purported registration in Cannon Township is a nullity, and may involve several criminal and fraudulent acts.⁵

As the elected judge of the 63rd District Court, first division, Respondent is required to be a “registered elector” within the parameters of that division. Respondent contends that he *is* a registered voter in Cannon Township, claiming as his “residence” a property he owns at 8631 Belding Road. See Respondent’s Voter Registration, appended to this brief as Attachment 1. Nevertheless, he lists the courthouse, at 105 Maple in Rockford, as his mailing address.

³ A certified copy of that affidavit was previously submitted to the Court. A plain copy is appended here as Attachment 2.

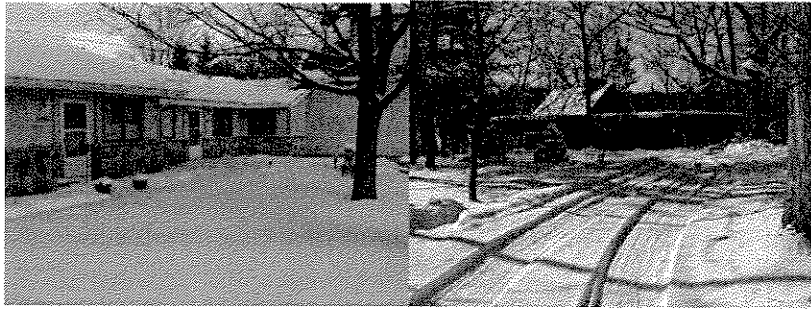
⁴ A copy of the relevant page of the phone book is appended as Attachment 3.

⁵ Knowingly reporting a change of address to the secretary of state that is not his residence address may be a misdemeanor. MCL 257.315(4). Making a false statement regarding one’s residence in an application to register to vote may be a misdemeanor. MCL 168.499(1).

Respondent's true "residence" – the one defined by Michigan Election Law as the place he habitually sleeps, keeps his personal effects and has a regular place of lodging, and if he has more than one residence the place he resides the greater part of the time⁶ – is in Ada Township, in the electoral division of the second division of the 63rd District Court. Because a person can only have one "residence" under the Michigan Election Law, a person can only be a qualified elector in one place. Respondent is truly a "qualified elector" in Ada Township, not Cannon Township, and his purported status as a "registered elector" in Cannon Township is a nullity and/or fraud. Thus, in order to be a judge of the first division of the 63rd district court, as he was elected to be, Respondent must **be and remain** a registered elector within his elected district. Because he cannot legally be a registered elector in the first division, and in fact is only a "qualified elector" in the second division (*i.e.*, he can register to vote there, but has not done so), Respondent is **not** a registered elector of the district and election division in which he holds office," contrary to the requirements of MCL 600.8201. As a result, Respondent has vacated his elected office. Const 1963 art. 6 §20.

The disparity between the two homes also bolsters the conclusion that Respondent resides in Ada Township, not Cannon Township. The pied-à-terre Respondent maintains on Belding Road in Cannon Township is one unit (assessed at \$61,400) in a condominium complex. See Attachment 4. The Ada Township property, in contrast, sits on nearly twelve acres of property (the land alone is valued at \$247,600) and has a home assessed at \$188,400. See Attachment 5.

⁶ MCL 168.11(1)



8631 Belding Rd NE
Cannon Township

201 Honey Creek Ave NE
Ada Township

Furthermore, even on Respondent's application to register to vote in the wrong precinct, he acknowledges that there is an issue with his purported residence in Cannon Township. He specifically lists the courthouse address (105 Maple Street in Rockford) as his mailing address, which only buttresses the proof that he does not even feign to reside in the proper electoral division; he does not even want to have to drive by his sham residence to pick up his mail. (See Attachment 1.) He also lists the courthouse address on his driver license (although "registered" at the Belding address) as his mailing address. See Attachment 6.

The Respondent has indicated his intent in no uncertain terms: he executed an affidavit, under oath, that the Ada Township property is his "primary residence." He lists that property in the phone book as his only residential address. His purported registration to vote at the Belding address is thus unsupported by law and constitutes a nullity (if not a criminal act), as does his use of that Belding address for his driver license.

The sham he perpetuates by living outside his district while pretending to be a valid registered voter within the district *and division* is over. He is a "qualified elector" in Ada Township, but he has deliberately and deceitfully chosen not to become a "registered elector" there. However, a district judge *must* be "a registered elector of the district *and election division*

in which he . . . holds office.” MCL 600.8201 (emphasis supplied). Thus, as a matter of law, Respondent cannot be a judge of the first division of the 63rd district court.

III. RESPONDENT HAS VACATED HIS JUDICIAL OFFICE BY VIRTUE OF HAVING REMOVED HIS DOMICILE FROM THE TERRITORIAL LIMITS OF THE ELECTORAL DIVISION FROM WHICH HE WAS ELECTED

“Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected or appointed, he shall have vacated his office.” Const 1963, art. 6, §20. As set forth above, Respondent has clearly removed his domicile beyond the limits of the territory from which he was elected, *i.e.*, beyond the limits of the territory comprising the first division of the 63rd district court. By removing his domicile to the territorial limits of the *second* division of that court, Respondent has vacated his judicial office.

The “limits of the territory” of the first division of the 63rd district court (where Respondent is ostensibly a judge) are set forth by statute: the cities of Cedar Springs and Rockford and the townships of Tyrone, Solon, Nelson, Spencer, Sparta, Algoma, Courtland, Oakfield, Alpine, Plainfield, Cannon and Grattan. MCL 600.8130(4)(a). Respondent’s admissions, his affidavit (which clearly and forcefully establishes his intent to be domiciled outside the territorial limits of the first division of the 63rd district court) demonstrate that his domicile has been in Ada Township (within the “limits of the territory” of the *second* division of the 63rd district court) since December 2005. MCL 600.8130(4)(b). Accordingly, Respondent vacated his office as of December 31, 2005. Const 1963, art. 6, §20. The office of judge of the district court of the 63rd District Court, first division has been vacated since December 31, 2005. Even if he were to move back into the proper district and division at this point he cannot reassume the judgeship he vacated over two years ago, any more than anyone else moving into

the district and division would become judge there. Respondent is now an ordinary citizen and a resident of Ada Township; he is no longer a judge of the 63-1 District Court.

WHEREFORE, the Examiner respectfully requests that this Honorable Court enter an order suspending Respondent from office, pending final resolution of these proceedings.

Respectfully submitted,

By: /s/
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DATED: February 14, 2008